



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 18, 2015

[REDACTED]
Menard Correctional Center
P.O. Box 1000
Menard, Illinois 62259

Detective Sergeant J. Sims, #102
Criminal Investigations Division
Matteson Police Department
20500 South Cicero Avenue
Matteson, Illinois 60443

RE: FOIA Request for Review – 2015 PAC 36261

Dear [REDACTED] and Detective Sergeant Sims:

This determination is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons that follow, the Public Access Bureau concludes that the Matteson Police Department (Department) improperly denied [REDACTED] FOIA request in its entirety.

In an undated letter received by the Department on June 27, 2015, [REDACTED] submitted a FOIA request to the Department seeking all records concerning his criminal prosecution in Cook County Circuit Court Case No. 06-CR-27754.¹ On June 29, 2015, the Department denied the request citing Illinois Supreme Court Rule 415(c); the Department's response asserted that this Rule "mandates that discovery materials are to remain in the exclusive custody of a criminal defendant's attorney, and should not be given to the criminal defendant or be in his or her possession."² In a letter dated July 7, 2015, [REDACTED] filed a Request for Review disputing the denial of his request, which stated: "I am without representation in my

¹Letter from [REDACTED] to Matteson Police Department (undated).

²Letter from Detective Sergeant J. Sims #102, Criminal Investigations Division, Matteson Police Department, to [REDACTED] (June 29, 2015), at 1.

[REDACTED]
Detective Sergeant J. Sims
December 18, 2015
Page 2

case, * * * in which I now will proceed pro[]se."³ His submission included a copy of a letter from the Office of the State Appellate Defender⁴ stating that the Illinois Supreme Court had denied [REDACTED] petition for leave to appeal an appellate court decision affirming his criminal convictions. *See People v. [REDACTED]* 2014 IL App (1st) 103436, 16 N.E.2d 129 (2014).

On July 20, 2015, the Public Access Bureau sent a copy of the Request for Review to the Department and asked it to provide a representative sample of the responsive records together with a detailed explanation for the assertion that Illinois Supreme Court Rule 415(c) prohibits the Department from providing copies of the requested records to [REDACTED]. The Department furnished those materials on July 24, 2015, stating in its written response:

I initially denied [REDACTED] request under Illinois Supreme Court Rule 415(c), which mandates that discovery materials are to remain in the exclusive custody of a criminal defendant's attorney, and should not be given to the criminal defendant or be in his or her possession.

Without a clear understanding of when a defendant is no longer a defendant, I believe rule 415(c) still applies and [REDACTED] the requestor and defendant in this matter, is not entitled to the requested records, nor can he legally be in possession of such records. Furthermore, [REDACTED] indicates in his PAC [Public Access Counselor] Review request that he "will proceed pro[]se," leading me to believe he is seeking an appeal(s), which again would prevent him from possessing such records as he would still be the defendant in such criminal proceedings. If he does indeed file an appeal, I believe that he must seek such records through discovery through the court system, and not directly through the police department utilizing the Freedom of Information Act.⁵ (Emphasis in original.)

³Letter from [REDACTED] to Public Access Counselor, Office of the Attorney General (July 7, 2015).

⁴Letter from Carolyn R. Klarquist, Assistant Appellate Defender, Office of the State Appellate Defender, First Judicial District, to [REDACTED] (September 29, 2014).

⁵Letter from Detective Sergeant J. Sims #102, Criminal Investigations Division, Matteson Police Department, to Steve Silverman, Assistant [Bureau Chief], Public Access Bureau (July 24, 2015), at 1-2.

[REDACTED]
Detective Sergeant J. Sims
December 18, 2015
Page 3

On July 31, 2015, the Public Access Bureau sent a copy of the Department's response to [REDACTED]
[REDACTED] he did not reply.

ANALYSIS

"All records in the custody or possession of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt." 5 ILCS 140/1.2 (West 2014). Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides: "Each public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." The exemptions from disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois University*, 176 Ill. 2d 401, 407 (1997).

The Department's responses to [REDACTED] FOIA request and to this office assert that Rule 415(c) prevents the Department from disclosing the requested records to [REDACTED]. We construe that response as an assertion of section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2014)), which permits a public body to withhold "[i]nformation *specifically prohibited from disclosure* by federal or State law or rules and regulations implementing federal or State law." (Emphasis added.) The General Assembly "has authorized exemptions to the FOIA's expansive disclosure policy when a given disclosure is not just prohibited 'by federal or State law or rules and regulations adopted under federal or State law' but *specifically* so prohibited." (Emphasis in original.) *Better Government Ass'n v. Blagojevich*, 386 Ill. App. 3d 808, 814 (4th Dist. 2008). Thus, the records are exempt from disclosure only if Rule 415(c) can be construed as specifically prohibiting the Department from disclosing the records at issue in this matter.

The basic rules of statutory construction apply to the construction of Illinois Supreme Court rules. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002) ("It is well settled that the construction of [Supreme Court] rules is comparable to this court's construction of statutes."); *see also* Ill. S. Ct. R. 2 (effective July 1, 1971) ("These rules are to be construed in accordance with the appropriate provisions of the Statute on Statutes (5 ILCS 70/0.01 *et seq.*), and in accordance with the standards stated in section 1-106 of the Code of Civil Procedure (735 ILCS 5/1-106)."). In construing a statute, the primary goal "is to ascertain and give effect to the intent of the General Assembly." *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006). The best indicator of legislative intent is the language of the statute, "which must be given its plain and ordinary meaning." *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶23, 962 N.E.2d 956, 964 (2012).

Rule 415(c) provides that "[a]ny materials *furnished to an attorney pursuant to these rules* shall remain in his exclusive custody and be used only for the purposes of conducting

his side of the case, and shall be subject to such other terms and conditions as the court may provide." (Emphasis added.) The committee comments on the Rule (Ill. S. Ct. R. 415(c), Committee Comments (adopted October 1, 1971)) explain its purpose:

If the materials to be provided were to become, in effect, matters of public availability once they had been turned over to counsel for the limited purposes which *pretrial disclosures* are designed to serve, the administration of criminal justice would likely be prejudiced. Accordingly, this paragraph establishes a mandatory requirement in every case that *the material which an attorney receives shall remain in his exclusive custody*. While he will undoubtedly have to show it to, or at least discuss it with others, he is not permitted to furnish them with copies or let them take it from his office. It should be noted that this paragraph also applies to the State. (Emphasis added.)

The representative sample of records that the Department provided for this office's confidential review includes police reports generated by the Department, laboratory analyses and other records related to forensic testing, court records reflecting criminal charges and the underlying facts of the offenses, property inventories, an arrest report and fingerprint card, cell check reports, the defendant's mug shot, and an autopsy report and related medical examiner records. The Department has neither asserted nor demonstrated that any of the records in question were furnished to an attorney for the Department pursuant to the rules of discovery. Although a public body's attorney may properly assert section 7(1)(a) of FOIA based on Rule 415(c) to withhold records that he or she received in discovery, the exemption is not available to the Department under these circumstances. The plain language of the Rule only requires an attorney to maintain exclusive custody of records "furnished" to him or her in discovery. Nothing in the Rule restricts a public body such as a police department from disclosing records that it generated or obtained outside of the discovery process.

With respect to the Department's assertion that [REDACTED] may file an appeal and therefore must obtain the records he seeks through discovery for that appeal, the article that Rule 415(c) falls under is entitled "Rules on Criminal Proceedings in the Trial Court." Ill. S. Ct. R. Art. IV. Illinois Supreme Court Rule 1 provides, in pertinent part: "The rules on proceedings in the trial court, together with the Civil Practice Law and the Code of Criminal Procedure, shall govern all proceedings in the trial court[.] * * * The rules on appeals shall govern all appeals." Because Rule 415(c) only governs trial court proceedings, it does not apply to appeals. Nor does the Rule specifically prohibit a defendant from using discovery alternatives, such as FOIA, to obtain records. Ill. Att'y Gen. Pub. Acc. Op. No. 13-017, issued November 12, 2013, at 7 ("Illinois Supreme Court rules governing discovery do not restrict parties to litigation from

[REDACTED]
Detective Sergeant J. Sims
December 18, 2015
Page 5

accessing records through FOIA."); *Hoover v. U.S. Department of the Interior*, 611 F. 2d 1132, 1137 (5th Cir. 1980) (a litigant's potential access to records through discovery in pending litigation did not preclude him from seeking the same records under FOIA because the pending litigation was "not related to the rights of general public access under the FOIA to agency documents."). Accordingly, we conclude that the Department has not sustained its burden of demonstrating that the records requested by [REDACTED] are exempt from disclosure pursuant to section 7(1)(a) of FOIA.

In accordance with the conclusions expressed in this determination, we request that the Department furnish [REDACTED] with copies of the requested records subject to permissible redactions pursuant to section 7 of FOIA (5 ILCS 140/7 (West 2014)). In particular, the Department may properly redact pursuant to section 7(1)(d)(iv) (5 ILCS 140/7(1)(d)(iv) (West 2014)) information that would "unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies[.]" If any information is redacted or withheld, the Department should issue a supplemental response to [REDACTED] that includes a "detailed factual basis for the application of any exemption claimed," and that otherwise complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2014)).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756 or the Chicago address listed on the bottom of the first page of this letter. This letter serves to close this file.

Very truly yours,

[REDACTED]
STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

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